

## ARTICLE II. 68.200. CRITICAL AREA OVERLAY DISTRICTS

### Division 1. 68.210. General Provisions and Definitions

#### **Sec. 68.10211. Authority, intent and purpose.**

- (a) ~~The River Corridor Article II, Critical Area Overlay Districts and its subclassifications, RC1, RC2, RC3, RC4, are map overlay districts, is enacted pursuant to the authority granted to the municipality in Minnesota Statutes 116G, which delegates responsibility to local government units to adopt regulations for protection of a designated critical area, designed to provide comprehensive floodplain and river bluff management for the city in accordance with the policies of Minnesota Statutes (Chapters 103 and 116G), Minnesota Regulations (MEQC 54) and The Mississippi River Corridor is a designated critical area under Governor's Executive Order No. 79-19.~~
- (b) It is the purpose of this ~~chapter~~ article:
- (1) To protect and preserve the Mississippi River Corridor as a unique and valuable resource for the benefit of the health, safety and welfare of the citizens of the city, ~~and the state, region, and nation;~~
  - (2) To prevent and mitigate irreversible damage to the Mississippi River Corridor;
  - (3) To protect and preserve the Mississippi River Corridor as an essential element in the federal, state, regional and local recreation, transportation, sewer and water systems;
  - (4) To maintain the river corridor's value and utility for residential, commercial, industrial and public ~~purposes~~ uses, where appropriate;
  - (5) To protect and preserve the Saint Paul Mississippi River Corridor's biological and ecological functions; and
  - (6) To preserve and enhance the Saint Paul Mississippi River Corridor's natural, aesthetic, cultural, scientific and historic functions values;
  - ~~(7) To guide development of the floodplain so as to minimize loss of life, threats to health, and private and public economic loss caused by flooding; and~~
  - ~~(8) To guide floodplain development in order to lessen the adverse effects of floods, but not to reduce or eliminate flooding.~~

(C.F. No. 03-241, § 2, 3-26-03)

#### **Sec. 68.212. Conflicting regulations.**

Whenever any provision of Article II, Critical Area Overlay Districts, conflicts with any other provision of this code, the more restrictive provision shall govern.

#### **Sec. 68.213. Other local, regional, state, and federal regulations.**

In addition to the requirements of this article, all uses and development shall be subject to all other applicable local, regional, state, and federal permits, laws and regulations.

#### **Sec. 68.214. Severability.**

If any section, clause, provision, or portion of this article is adjudged invalid or unconstitutional by a court of competent jurisdiction, the remainder of this article shall not be affected thereby.

## **Sec. 68.215. Definitions.**

Terms defined elsewhere in the zoning code shall have the meanings as therein defined. The following terms shall have the meanings ascribed to them herein.

*Bluff.* A high, steep, natural topographic feature, even if altered, such as a broad hill, cliff, or embankment rising above the river corridor floodplain with more than sixteen (16) feet total vertical rise, an average slope exceeding eighteen (18) percent between the bluff toe and a point sixteen (16) feet or more above the bluff toe, and a continuous area of more than two hundred (200) square feet regardless of property boundaries.

*Bluff face.* That portion of a bluff, between the bluffline and the bluff toe, with a slope exceeding eighteen (18) percent.

*Bluffline (top of a bluff).* A line along the top of a bluff, ~~certain steep slopes facing the Mississippi River Valley as shown on the River Corridor critical area overlay Z zoning district M maps and requiring field verification.~~ In any particular case, the bluffline shall mean a line drawn along the top of the bluff such that the slope below the line is ~~steeper than~~ exceeds eighteen (18) percent and the slope above the line is eighteen (18) percent or less.

*Bluff toe (bottom of a bluff).* A line along the bottom of a bluff, shown on the critical area overlay zoning district maps and requiring field verification, such that the slope above the line exceeds eighteen (18) percent and the slope below the line is eighteen (18) percent or less.

*Development (River Corridor Critical Area Overlay Districts only).* The making of any material change in the use or appearance of any structure or land including, but not limited to: a reconstruction, alteration of the size, or material change in the external appearance, of a structure or the land; a change in the intensity of use of the land; alteration of a shore or bank of a river, stream, lake or pond; a commencement of drilling (except to obtain soil samples); mining or excavation; demolition of a structure; clearing of land as an adjunct to construction; deposit of refuse, solid or liquid waste, or fill on a parcel of land; or the dividing of land into two (2) or more parcels.

*Mississippi River Corridor.* That area of the city within the boundaries of the Mississippi River Corridor Critical Area, established by Executive Order No. 79-19.

*Natural topographic feature.* For the purpose of defining bluff, steep slope, and very steep slope in this section, does not mean unaltered, but simply distinguishes these topographic features from constructed things such as levees and road embankments.

*Ordinary ~~Normal~~ high water level mark.* A mark delineating the highest water level that has been maintained for a sufficient period of time to leave evidence of the level upon the landscape. It is commonly that point where the natural vegetation changes from predominantly aquatic to predominantly terrestrial. When the ~~normal~~ ordinary highwater level mark is not evident, setbacks shall be measured from the stream bank of the main channel, adjoining side channels, backwater and sloughs.

*Shoreland.* Land located within the following distances from public waters: (a) One thousand (1,000) feet from the normal high water mark of a lake, pond, or flowage; and (b) three hundred (300) feet from a river or stream, or the landward extent of a floodplain designated by ordinance on such a river or stream, whichever is greater. The practical limits of shorelands may be less than the statutory limits whenever the waters involved are bounded by natural topographic divides which extend landward from the waters for lesser distances, as determined by the Minnesota Department of Natural Resources.

Slope, steep. A natural topographic feature with an average slope over twelve (12) percent measured over a horizontal distance of fifty (50) feet or more, with more than six (6) feet total vertical rise and a continuous area of more than one thousand (1000) square feet regardless of property boundaries.

Slope, very steep. A natural topographic feature with an average slope over eighteen (18) percent measured over a horizontal distance of fifty (50) feet or more, with more than nine (9) feet total vertical rise and a continuous area of more than two hundred (200) square feet regardless of property boundaries.

Top of very steep slope. A line along the top of a very steep slope such that the slope below the line exceeds eighteen (18) percent measured over a horizontal distance of fifty feet, and the slope above the line is eighteen (18) percent or less.

#### **Sec. 68.216. Establishment.**

Article II, Critical Area Overlay Districts, applies to that area of the city within the boundaries of the designated Mississippi River Corridor Critical Area. For the purposes of this code, the Critical Area is hereby divided into the CA1 Critical Area Rural Open Space Overlay District, CA2 Critical Area Urban Open Space Overlay District, CA3 Critical Area Urban Developed Overlay District, and CA4 Critical Area Urban Diversified Overlay District. These Critical Area Overlay Districts are shown on the critical area overlay zoning district maps accompanying this code, which are hereby made a part of this code as if the information set forth thereon were fully described herein.

#### **Sec. 68.217. Compliance with regulations.**

Within the Critical Area Overlay Districts, no structure, fill or material shall hereafter be located, constructed, extended, or altered, and no new use or change shall be made or maintained of any building, structure or land, or part thereof, except in conformity with the provisions of Article II, Critical Area Overlay Districts, and other applicable laws and regulations. Legal nonconforming uses and structures existing on the effective date of this article or amendment thereto may be permitted to continue as provided under local, state, and federal regulations.

### Division 2. 68.220. Administration

#### **Sec. 68.221. Permits.**

No permit shall be issued for erection, addition, alteration, or use of any building, structure or land within the Critical Area Overlay Districts that is not in conformance with the provisions of this article.

#### **Sec. 68.222. Site plan review.**

- (a) A site plan shall be submitted to and approved by the planning commission before a development permit is issued for site work or the erection or enlargement of structures for all development except a single one-family dwelling and associated accessory structures that do not affect steep slopes. The site plan shall include soil types, topography, a vegetation inventory according to the requirements of section 68.243(c), expected changes in the site resulting from the development, measures to address adverse environmental effects, and additional information as may be determined by the zoning administrator as necessary to ensure consistency with this article. When necessary to determine whether development affects steep slopes or meets bluff setback requirements, and for development

that affects steep slopes, the site plan shall include ground vertical contour intervals of no more than two (2) feet sealed by a licensed Minnesota architect, engineer, landscape architect or land surveyor. For development that affects steep slopes, the zoning administrator may require submission of a report by a licensed geotechnical or soils engineer showing that the soil types and geology are suitable for the proposed development, how the development will be accomplished without increasing erosion, and how vegetation will be managed to control runoff. If material changes are made after the site plan is approved, the site plan shall be resubmitted to and must be approved by the planning commission before construction goes beyond the original permit.

- (b) The site plan shall be approved only if it adequately assesses and minimizes adverse environmental effects and maximizes beneficial environmental effects. In approving a site plan, conditions may be imposed where deemed reasonable and necessary to protect the public interest and comply with the spirit and intent of the provisions of this article. Such conditions may include, but are not limited to, the following: retention and planting of vegetation; reduced lot coverage and impervious surfacing; and design and location of buildings, drives and parking areas to fit the natural topography.

#### **Sec. 68.223. Conditional Use Permits.**

An application for a conditional use permit required by this article shall include a site plan meeting the requirements of section 68.222(a). A conditional use permit may be granted only when the proposed use is consistent with the intent and purpose of this article, compatible with uses in the immediate vicinity, and permitted by all other applicable regulations. In approving a conditional use permit, conditions may be imposed as described for site plans in section 68.222(b).

#### **Sec. 68.224. Variances.**

An application for variance to the provisions of this article shall include a site plan meeting the requirements of section 68.222(a). In addition to the requirements for zoning variances in MN Statutes section 462.357, the burden of proof shall rest with the applicant to demonstrate conclusively that the variance will not result in a hazard to life or property and will not adversely affect the safety, use or stability of a public way, slope or drainage channel, or the natural environment. If an application for a variance claims economic hardship as a basis for the variance, the applicant shall submit a pro forma economic feasibility analysis to explain the claim. In granting a variance, conditions may be imposed as described for site plans in section 68.222(b).

#### **Sec. 68.225. Notify department of natural resources, MNRRA, and watershed districts.**

A copy of the application for a development permit for which the city is required to hold a public hearing shall be mailed to the department of natural resources critical area program at least thirty (30) days before city action on the application. Notice of such application shall be mailed to the Mississippi National River and Recreation Area and the watershed district with jurisdiction over the area at least fifteen (15) days before a public hearing on the application. A copy of all decisions granting such permits or approvals shall be forwarded to the department of natural resources critical area program within ten (10) days of such action.

#### **Sec. 68.226. Amendments.**

All amendments to this article shall be made in the manner set forth in Minnesota Statutes, Sections 463.357 and 116G.10, MN Rules, part 4410.9500, and Governor's Executive Order No. 79-19. All amendments to this article, including amendments to the critical area overlay zoning

district maps, shall be submitted to the department of natural resources critical area program and approved by the commissioner of natural resources prior to adoption. The department of natural resources critical area program shall be given thirty (30) days' written notice of all hearings to consider an amendment to this article. Such notice shall include a draft of the ordinance amendment under consideration.

Division 3. 68.230. ~~RC3 River Corridor Urban Open~~ Critical Area Overlay Districts

**Sec. 68.231. Intent, CA1 Critical Area Rural Open Space Overlay District.**

Lands and waters within this district shall be used and developed to preserve their open, scenic and natural characteristics and ecological and economic functions. Undeveloped islands shall be maintained in their existing natural state; however, the transportation function of the river shall be maintained and preserved.

**Sec. 68.232. Intent, CA2 Critical Area Urban Open Space Overlay District.**

~~It is intended that~~ Lands and waters within this district shall be managed to conserve and protect the existing and potential recreational, scenic, natural and historic resources and uses within this district for the use and enjoyment of the surrounding region. Open space shall be provided in the open river corridor ~~is~~ for public use and the protection of unique natural and scenic resources. The existing transportation role of the river in this district will be protected.

(C.F. No. 03-241, § 2, 3-26-03)

**Sec. 68.232. Permitted uses.**

~~In the RC3 River Corridor Urban Open Overlay District, use of the land, location and erection of new buildings or structures, and the alteration, enlargement and moving of existing buildings or structures from other locations or districts shall conform to those specified uses and standards of the corresponding underlying district as established in section 60.303 to the extent that they are not prohibited by any other provision of the zoning code. In addition, permitted uses shall be subject to the following applicable standards and those in section 68.400 et seq.~~

(C.F. No. 03-241, § 2, 3-26-03)

**Sec. 68.233. Standards for permitted uses in the RC3 Urban Open District.**

- ~~(a) Development shall be limited to forty (40) feet in height.~~
- ~~(b) The development of new and expansion of existing commercial and industrial uses shall only be on lands which are on the landward side of blufflines.~~
- ~~(c) Mining and extraction operations shall not be permitted.~~
- ~~(d) No use shall be permitted which is likely to cause pollution of water, as defined in Minnesota Statutes, Section 115.01, unless adequate safeguards, approved by the state pollution control agency, are provided.~~

(C.F. No. 03-241, § 2, 3-26-03)

**Sec. 68.234. Conditional uses.**

- ~~(a) Conditional uses are those specified by the corresponding underlying district as established in section 60.303 to the extent that they are not prohibited by any other provision of the zoning code. They are subject to standards specified in the corresponding underlying~~

~~district section and to those specified in sections 68.233 and 68.400 et seq.~~

- ~~(b) Such uses will be permitted only upon application and issuance of a conditional use permit by the planning commission.~~

~~(C.F. No. 03-241, § 2, 3-26-03)~~

**Sec. 68.233. Intent, CA3 Critical Area Urban Developed Overlay District.**

Lands and waters within this district shall be maintained largely as residential areas. The expansion of existing and development of new industrial, commercial, and other non-residential or non-recreational uses shall be limited to preserve and enhance the residential character of this district.

**Division 4 . 68.240. RC4 River Corridor Urban Diversified Overlay District**

**Sec. 68.2341. Intent, CA4 Critical Area Urban Diversified Overlay District.**

~~It is intended that the~~ Lands and waters in this district shall be used and developed to maintain the present diversity of commercial, industrial, residential and public uses of the lands, including the existing transportation use of the river; to protect historical sites and areas, natural scenic and environmental resources; and to expand public access to and enjoyment of the river. New commercial, industrial, residential and other uses ~~are~~ may be permitted if they are compatible with these goals.

~~(C.F. No. 03-241, § 2, 3-26-03)~~

**Sec. 68.23542. Permitted uses.**

The following uses shall be permitted within the Critical Area Overlay Districts, except uses specifically prohibited in section 68.236 or specifically listed as conditional uses in section 68.237, provided that the use complies with all other applicable laws and regulations: residential uses, civic and institutional uses, commercial uses, public services and utilities, signs, and transportation facilities; and industrial uses in the CA4 Critical Area Urban Diversified Overlay District.

~~In the RC4 River Corridor Urban Diversified overlay district, use of the land, location and erection of new buildings or structures and the alteration, enlargement and moving of existing buildings or structures from other locations or districts shall conform to those specified uses and standards of the corresponding underlying district as established in section 60.303 to the extent that they are not prohibited by any other provision of the zoning code. In addition, permitted uses shall be subject to the standards specified in section 68.400 et seq.~~

~~(C.F. No. 03-241, § 2, 3-26-03)~~

**Sec. 68.243. Standards for permitted uses in the RC4 Urban Diversified District.**

~~No use shall be permitted which is likely to cause pollution of waters, as defined in Minnesota Statutes, Section 115.01, unless adequate safeguards, approved by the state pollution control agency, are provided.~~

~~(C.F. No. 03-241, § 2, 3-26-03)~~

**Sec. 68.236. Prohibited uses.**

- (a) The following uses shall be prohibited in all Critical Area Overlay Districts:

- (1) advertising sign (except those located on bus stop shelters, courtesy benches, and newsstands)
  - (2) dump, sanitary landfill
  - (3) feedlot
  - (4) meat packing plant
  - (5) metal shredder, large
  - (6) mining
  - (7) motor vehicle salvage operation
  - (8) refining of petroleum or gasoline
  - (9) rendering plants and tanning
  - (10) stockyard
- (b) The following uses shall be prohibited in the CA1 Critical Area Rural Open Space Overlay District, CA2 Critical Area Urban Open Space Overlay District, and CA3 Critical Area Urban Developed Overlay District:
- (1) industrial uses (except that industrial uses shall be permitted in the CA3 district south of Ford Parkway and north of Hampshire Avenue extended to Mississippi River Boulevard, and between Rankin Street and Kay Avenue extended to Shepard Road)
  - (2) auto impound lot
  - (3) barge repair and cleaning facility
  - (4) intermodal freight yard, auto marshaling yard
  - (5) municipal incinerator
- (c) The following uses shall be prohibited in the CA2 Critical Area Urban Open Space Overlay District and CA3 Critical Area Urban Developed Overlay District:
- (1) barge slip, barge fleeting area
  - (2) sewage treatment plant

**Sec. 68.23744. Conditional uses.**

- (a) The following uses shall require a (a) conditional uses permit in the CA4 Critical Area Urban Diversified Overlay District. ~~are those specified by the corresponding underlying district as established in section 60.303 to the extent that they are not prohibited by any other provision of the zoning code. They are subject to standards specified in the corresponding underlying district section and to those specified in section 68.400 et seq.~~
- (1) concrete, asphalt and rock crushing facility
  - (2) recycling processing center, outdoor
- (b) Such Conditional uses will be ~~are~~ permitted only upon application and issuance of a conditional use permit by the planning commission. Except for the portion of the use that requires a riverfront location, conditional uses shall be set back at least one hundred (100) feet from the ordinary high water level, and vegetation shall be established and maintained to appropriately screen the facility from view from the river. The application for a

conditional use permit shall include a site plan showing the location of buildings, areas of outdoor processing and storage, fences, walls and landscaping. A narrative shall accompany the plan stating the measures the applicant will take to address any dust, erosion, noise, or other potentially adverse effects, and satisfactory measures shall be required and implemented.

(C.F. No. 03-241, § 2, 3-26-03)

#### ~~ARTICLE IV. 68.400. RIVER CORRIDOR STANDARDS AND CRITERIA~~

##### Division 4. 68.240. Critical Area Standards and Regulations

#### **Sec. ~~68.40~~241. Objectives.**

The objective of standards and criteria is to maintain the aesthetic integrity and natural environment of the river corridor in conformance to the St. Paul Mississippi River Corridor Plan by reducing the effects of poorly planned shoreline and bluffline development; providing sufficient setback for sanitary facilities; preventing pollution of surface and groundwater; minimizing flood damage; preventing soil erosion; and implementing metropolitan plans, policies and standards.

(C.F. No. 03-241, § 2, 3-26-03)

#### **Sec. ~~68.40~~242. Protection of ~~shorelands~~ riverbanks, floodplains, wetlands and bluffs.**

- (a) *Generally.* Development shall be conducted so that the smallest practical area of land be developed at any one time and that each area be subjected to as little erosion or flood damage as possible during and after development.
- (b) Location ~~Placement~~ of structures and uses.
  - (1) New commercial and industrial development in the floodplain or within three hundred (300) feet of the ordinary high water level, except for the area of downtown Saint Paul along the river's left descending bank from Chestnut Street to the Lafayette/Highway 52 bridge, shall have a relationship to the river, a need for a riverfront location, and/or enhance the river environment based on the following criteria: having an economic or operational need for a river location, supporting the attractiveness of surrounding neighborhoods, sustaining the economic vitality of riverfront improvements, offering public access to and along the river, maintaining views of the river, cleaning up polluted areas on the site, and meeting or exceeding natural resource policies in the city's adopted comprehensive plan. Expansions of existing uses in the floodplain or within three hundred (300) feet of the ordinary high water level are acceptable, consistent with the natural resource protection requirements of this article.
  - (2+) Structures shall be set back from the ordinary high water level at least one hundred (100) feet. The following minimum setbacks for each class of public waters as described in Minnesota Regulations NR-82 shall apply to all structures except those specified as exceptions in subsection (87) below.
    - a. ~~For natural environment waters at least two hundred (200) feet from the normal high water mark for lots not served by public sewer and at least one hundred fifty (150) feet from the ordinary high water mark for lots served by public~~



sewers.

- b. ~~For general development waters at least seventy five (75) feet from the normal high water mark for lots not served by public sewer and at least fifty (50) feet from the ordinary high water mark for lots served by public sewer.~~
- (32) ~~No commercial or industrial structures, other than one-family dwellings and associated accessory structures, and those uses specified as exceptions in subsection (8) below, development shall be permitted on steep slopes greater than twelve (12) percent.~~
- (43) ~~No residential structures, grading, or filling, except for those structures and uses specified in subsection (8) below, development shall be permitted on very steep slopes greater than eighteen (18) percent.~~
- (54) ~~No structures, grading, or filling, except for those structures and uses specified as exceptions in subsection (8) below, Bluff development shall take place be permitted on a bluff face, within at least forty (40) feet landward of all blufflines, or within fifteen (15) feet of a bluff toe. In the CA1 Critical Area Rural Open Space Overlay District and CA2 Critical Area Urban Open Space Overlay District, such structures shall be set back from the top of a very steep slope a distance equal to the sum of the height of the very steep slope and the height of the structure, to a maximum of forty (40) feet.~~
- (65) To the greatest extent possible, transportation, utility and other transmission service facilities and corridors shall avoid the following:
- a. Steep slopes.
  - b. Intrusions into or over streams, valleys and open exposures of water.
  - c. Intrusions into ridge crests and high points.
  - d. Creating tunnel vistas.
  - e. Wetlands.
  - f. Disturbing forests (by running route along the fringe rather than through them or, if necessary, to route through forests; utilizinge open areas in order to minimize cutting).
  - g. Soils susceptible to erosion; which would create sedimentation and pollution problems.
  - h. Areas of unstable soils which would be subject to extensive slippages.
  - i. Areas with high water tables; ~~and,~~
  - j. Open space recreation areas.
- (76) ~~At river crossing points, public facilities, crossing corridors and other rights-of-way shall be consolidated, so that the smallest area possible is devoted to crossing.~~
- (87) Exceptions:
- a. Location of piers and docks shall be controlled by applicable state and local regulations.
  - b. The following are exceptions to the location requirements in subsections (2),

(3), (4), and (5) above: fences and structures that do not require a building permit; bridges and bridge approach roadways; roads, driveways and railroads as minimally necessary; trails, sidewalks and stairways; scenic overlooks and public observation platforms; structures needed for transportation safety; essential service distribution systems; flood control structures; and navigational, commercial, industrial or permitted open space uses applied to that portion of the use requiring location on public waters may be closer to such waters than the setbacks specified in the standard set out in subsection (3) above.

- c. The area of downtown Saint Paul along the river's left descending bank from Chestnut Street to the Lafayette/Highway 52 bridge shall be an exception to the location requirements in subsections (3), (4), and (5) above.

(c) *Grading and filling.*

- ~~(1) A minimum amount of filling shall be allowed when necessary, but in no case shall the following restrictions on filling be exceeded. Furthermore, fill opportunities shall be fairly apportioned to riparian landowners. The developer shall evaluate ownership patterns, configuration and the bottom profile of each wetland basin before fill opportunities are apportioned.~~
- (16) Grading and filling (when allowable) shall minimize site alteration and protect environmentally sensitive areas. Any site alteration shall be the minimum area necessary for development. Development shall fit existing topography and vegetation with a minimum of clearing and grading.
- (27) Grading or filling shall not begin until applicable erosion and sediment control measures have been implemented. Erosion and sediment control measures in accordance with appropriate best management practices shall be maintained during and after grading and filling. Erosion control measures and revegetation plans shall make maximum use of native vegetation. No Rehabilitation slopes shall be stabilized with plant materials, normally should not exceed a 4:1 slope without good cause shown, and shall not exceed a 2:1 shall be steeper than eighteen (18) percent slope.
- (32) Grading and or filling in shoreland areas (when allowable) or any other substantial alteration of the natural topography shall be controlled in accordance with the following criteria:
- a. The smallest amount of bare ground shall be exposed for as short a time as feasible.
  - b. Temporary ground cover shall be used.
  - c. Methods to prevent erosion and trap sediment shall be employed.
  - d. Fill shall be stabilized.
  - e. All disturbed areas shall be restored with vegetation by the completion of the development.
- (43) Only fill free of chemical pollutants and organic wastes shall be used. (5) Solid waste disposal and landfill shall is not be permitted in the River Corridor District.
- ~~(4) Total filling shall not cause the total natural flood storage capacity of the wetland to fall below the natural volume of runoff from the wetland and watershed generated by a 100-year storm, as defined by the National Weather Service.~~

(58) ~~Dredging of a shoreland or wetland shall be allowed only when it will not have adverse effect upon the wetland.~~ Dredging for purposes of maintaining the river for navigation shall follow the most current state and federal regulations. All other dredging, when allowed, shall be limited as follows:

- a. It shall be located in the areas of minimum vegetation.
- b. It shall not significantly change the water flow characteristics, or adversely affect significant fish and wildlife habitat or protected vegetation.
- c. The size of the dredged area shall be limited to the absolute minimum.
- d. Deposit of dredged material shall not result in a change in the current flow, or in destruction of vegetation or fish spawning areas, or in water pollution.

(C.F. No. 03-241, § 2, 3-26-03)

**Sec. 68.40243. Management of Protection of wildlife and vegetation.**

- (a) Generally. Development and vegetation shall be ~~managed~~ conducted so as to: 1) provide for, protect and enhance visual buffering and ecosystem function; 2) control erosion and minimize runoff; 3) preserve, protect, enhance and restore the natural qualities of the river corridor; and 4) preserve, enhance and restore plant and wildlife habitats ~~avoid intrusion into animal and plant habitats.~~
- (b) Existing native and non-native, non-invasive vegetation, and wildlife habitat shall be protected and maintained to the greatest extent possible; their disturbance shall be minimized. Any new development shall be located on the site so as to maintain visual buffering and ecosystem function. Endangered and threatened species identified in the Minnesota Department of Natural Resources (DNR) Natural Heritage Data Base shall not be disturbed. The planning or zoning administrator shall refer to the Minnesota DNR Natural Heritage Data Base when reviewing all building, fill or grading permits and subdivision applications for properties in the Critical Area Overlay District. If the property is identified in the Minnesota DNR Natural Heritage Data Base as potentially having endangered or threatened species, a site survey identifying the location of any and all endangered and threatened species identified in the Data Base shall be required.
- (ca) An inventory of all existing trees of three (3) inches DBH or larger and native shrub areas within the limits of disturbance shall accompany any application for a building, fill or grading permit that causes disturbance to existing vegetation at the ground level. Such inventory shall show the location and species of each tree and native shrub area, and the diameter at breast height (DBH) of each tree. A similar inventory shall accompany any application for site plan or subdivision review and shall include the entire parcel(s) for which site plan or subdivision approval is being requested. For site plan or subdivision applications that contain areas greater than five thousand (5,000) square feet where no trees or shrubs will be disturbed in any way, an inventory need not be prepared for the undisturbed area, but the area must be clearly marked and maintained as an area where no disturbance will occur. ~~No alteration of the natural environment or removal of vegetation shall be permitted when such alteration or removal would diminish the ability of dependent wildlife to survive in the River Corridor.~~
- (d) For development requiring a building, fill or grading permit, subdivision approval, and/or site plan review, compliance with the following standards is mandatory; in all other cases, compliance is encouraged.

- (1) Vegetation removed due to development shall be replaced with native vegetation or native cultivars, to the extent possible, elsewhere on the site. Where native trees are removed, they shall be replaced at a ratio of a minimum of one-to-one (1:1) with native or native cultivar tree species of similar type, density and mature height. The highest priority for replacement vegetation shall be to prevent erosion and buffer the structure's visual impact on the river and river valley, with the other purposes under Sec. 68.243 following.

If on-site replacement of vegetation is not possible, replacement native or native cultivar vegetation shall be established within one planting year elsewhere in the Critical Area Overlay District. If a suitable off-site location cannot be determined, a fee in lieu thereof shall be assessed for the required replacement. The fee amount shall be equal to the current value of each tree or shrub based on the latest revision of "A Guide to the Professional Evaluation of Landscape Trees, Specimen Studies and Evergreens," prepared by the International Society of Arboriculture, plus ten (10) percent. All funds collected, and interest earned thereon, shall be maintained in a separate fund and shall be expended by the Director of Parks and Recreation exclusively for vegetation replacement within the Critical Area Overlay District. Replacement vegetation shall be maintained for at least two (2) years by the property owner responsible for planting it or subsequent owners of property. Any replacement vegetation that dies or is found to be diseased during that two-year period shall be replaced within one (1) planting year.

- (2) Replacement plantings shall always be vegetation suitable for the site's ecology, and soil, light and water conditions.
  - (3) A natural shoreline buffer (naturally-occurring sand banks, rock outcrops and vegetated areas) of a minimum of one hundred (100) feet from the ordinary high water level shall be retained, restored or created to provide for optimum riparian ecosystem functions and to help minimize the impact of runoff, sediment and nutrients from adjacent lands into the water. Where appropriate, when restoring, redeveloping or stabilizing the river's edge, soil bioengineering techniques and native plantings shall be used alone or in combination with conventional engineered solutions. The visual impact of flood control structures shall be minimized through the use of native vegetation. Exceptions are allowed for development that cannot physically function without a riverfront location, such as barge loading/unloading facilities; such development need not provide a natural shoreline buffer between its river-dependent facilities and the river.
  - (4) Canopy cover shall be optimized wherever new development or redevelopment of a site occurs. Landscaping shall be incorporated to the greatest extent possible to achieve visual buffering and ecosystem function.
  - (5) New development or redevelopment of a site adjacent to publicly-owned nature preserves, sanctuaries and other spaces specifically dedicated to the preservation of vegetation in its natural state shall use local genotypes, not horticultural varieties or cultivars of native species, to the greatest extent possible. The list of such sites shall be maintained by the planning administrator.
- (e) On sites that have a tree canopy, the essential character and density of that canopy shall be maintained.

- (f) Clear cutting of trees and shrubs is prohibited, except the minimum amount necessary for approved roads, utilities, stormwater management facilities, structures, parking areas and native vegetation restorations. In those cases where clear cutting is necessary, any exposed, erosion-prone soils shall be stabilized.
- (g**h**) On very steep slopes, within one hundred (100) feet of the ordinary high water level, and within forty (40) feet of blufflines, removal of the shrub and canopy layer shall be prohibited, except the minimum amount necessary for utilities, transportation infrastructure, trails, native vegetation restorations, and development that cannot physically function without a riverfront location. In those cases where removal is necessary, any exposed, erosion-prone soils shall be stabilized. ~~No wetland or bluffline vegetation shall be removed or altered except that required for the placement of structures.~~
- (h**e**) Removal of non-native invasive trees and shrubs and replacement with native trees and shrubs is encouraged. Non-native invasive woody plants include, but are not limited to, the following species: Amur maple (*Acer ginnala*), Norway maple (*Acer platanoides*), Japanese barberry (*Berberis thunbergii*), Siberian peashrub (*Caragana arborescens*), Russian olive (*Elaeagnus angustifolia*), Exotic honeysuckles (*Lonicera tartarica*, *Lonicera morrowii*, *Lonicera x bella*), Common buckthorn (*Rhamnus cathartica*), Glossy or alder buckthorn (*Rhamnus frangula*), Black locust (*Robinia pseudoacacia*), and Siberian elm (*Ulmus pumila*). Any removal of non-native invasive trees and shrubs shall utilize best-management practices for erosion control. Total removal shall be prohibited if such removal will result in exposed, erosion-prone soils; in this case, removal of non-native invasive trees and shrubs shall be phased over several years to allow native replacement vegetation to take hold and prevent erosion. ~~Clear cutting shall be prohibited except as necessary for placing approved public roads, utilities, structures and parking areas.~~
- (i**d**) Requirements of this section shall not be deemed to prevent establishment and maintenance of urban lawns, decorative borders and gardens, maintenance pruning for the health of trees and shrubs, or trimming to remove nuisance conditions, provided visual buffering in summer, leaf-on conditions is maintained to the maximum extent possible. An exception shall be allowed for maintenance pruning of trees and selective cutting of shrubs to provide views from scenic overlooks on public property. ~~Natural vegetation shall be restored after any construction project.~~
- (j**e**) Requirements of this section shall not prevent the removal of hazard trees. A “hazard tree” is a tree that exhibits damage resulting from insect, disease, age, or storm and, if it were to fall, would be a safety risk to people or property. Replacement of hazard trees with native trees or native cultivars of similar type, density and mature height shall occur within one planting year. Replacement vegetation shall be maintained for at least two (2) years by the property owner responsible for planting it or subsequent owners of property. Any replacement vegetation that dies or is found to be diseased during that two-year period shall be replaced within one (1) planting year. ~~Watering areas necessary for plant survival shall be maintained or provided.~~
- (f) ~~Development shall not cause extreme fluctuations of water levels or unnatural changes in water temperature, water quality, water currents or movements which may have an adverse impact on endangered or unique species of birds or wildlife.~~

**Sec. 68.40244. Protection of water quality.**

- (a) *Generally.* Development shall occur so that surface and subsurface water is not adversely affected by contaminants. Water quality should meet or exceed state standards. No use shall be permitted which is likely to cause pollution of water, as defined in Minnesota Statutes, Section 115.01, Subd. 13 unless adequate safeguards, approved by the state pollution control agency, are provided.
- (b) *Contamination.*
- (1) Development shall not be permitted on wet soils, very shallow soils, soils with high shrink-swell or frost action potential unless it is shown that appropriate construction techniques capable of overcoming the restrictive condition will be utilized.
  - (2) Individual sewage treatment ~~Septic tanks and soil absorption~~ systems, as defined by Minnesota Rule 7080.0020, shall not be permitted where public sewer systems are available. In areas where public sewers are not available, such individual sewage treatment systems shall be set back from the normal ordinary high water mark level at least seventy-five (75) feet and setback from the bluffline at least forty (40) feet, in accordance with the class of public waters as prescribed in Minnesota Regulations NR 82:
    - a. ~~On natural environment waters, at least one hundred fifty (150) feet.~~
    - b. ~~On general development waters, at least fifty (50) feet.~~
  - (3) Private wells shall be placed in areas not subject to flooding and up slope from any source of contamination. Wells already existing in areas subject to flooding shall be floodproofed in accordance with accepted engineering standards as defined in the Uniform Minnesota State Building Code.
  - (4) Commercial or industrial land uses requiring the storage or production of materials or wastes that may create a pollution hazard for groundwater or surface water shall be prohibited unless the quality of both the groundwater and surface waters can conform to all applicable state and federal standards, criteria, rules and regulations.
- (c) *Runoff.*
- (1) Stormwater runoff controls for development shall be in accordance with standards set forth in Chapter 52, Stormwater Runoff, of the Legislative Code. The phases of development shall be planned so that only areas which are actively being developed are exposed. Other areas shall have cover of vegetation or mulch.
  - (2) Development shall be planned and conducted to minimize runoff rate and volume, and to improve quality of runoff, through site design and appropriate best management practices. Best management practices are described in the most recent versions of Minnesota Pollution Control Agency publications "Minnesota Stormwater Manual" and "Protecting Water Quality in Urban Areas." Best management practices must be adapted to the site and can be adopted from other sources; however, they must be similar in purpose and as effective and stringent as the Minnesota Pollution Control Agency's best management practices. Other sources include current versions of "Minnesota Small Sites Urban Best Management Practices Manual," Metropolitan Council Environmental Services, and "Erosion Control Design manual," Minnesota Department of Transportation. Natural vegetation in shoreland and bluff areas shall be preserved to retard surface runoff and soil erosion and to utilize excess nutrients.

- (3) Sediment shall be controlled and retained within the development site area in accordance with appropriate best management practices as described and referenced in subsection (2) either by filtering runoff as it flows through the development area or by detaining sediment-laden runoff in a sediment basin so that the soil particles settle out.
- (4) Stormwater runoff ~~Water~~ released to a drainage system shall be directed in such a manner as to travel over ~~natural~~ vegetated areas rather than across established surfaces. ~~(5) Stormwater runoff may be directed to wetlands only when free of silt, debris and chemical pollutants and only at rates which will not disturb vegetation, or increase turbidity or impair the wetland.~~
- (~~56~~) Development ~~which takes place near steep slopes greater than twelve (12) percent~~ shall not result in increased runoff onto those slopes sufficient to damage slope integrity, vegetation, or structures thereon. Except for necessary erosion control in accordance with appropriate best management practices, stormwater management facilities shall not be constructed on an bluff face, within forty (40) feet of a bluffline, on very steep slopes, or within a distance from the top of a very steep slope equal to the height of the very steep slope, to a maximum of forty (40) feet.
- (~~67~~) Plans shall be submitted to the planning commission for any development placed landward from dikes, floodwalls or levees which is below the flood protection elevation of the dikes, floodwalls or levees. The plans must provide measures to ensure that floodwaters do not back up onto the development from stormwater drainage systems.

(C.F. No. 03-241, § 2, 3-26-03)

#### **Sec. 68.245. Protection of views.**

- (a) Generally. Development shall be conducted so that, consistent with city plans and an urban setting, the design of new structures reflects the river corridor's natural character and responds to topography by preserving critical public and panoramic views of and from the river and bluffs. Site plans for development shall ensure that structure placement, buffering, landscaping, and re-vegetation are compatible with the character and use of the river corridor in the particular district; provide opportunities for open space establishment and for public viewing of the river corridor whenever applicable; maintain riverbanks, bluffs and scenic overlooks in their natural state, and minimize interference with views of and from the river, except for specific uses requiring river access; and provide for the screening of existing development which constitutes visual intrusion, wherever appropriate.
- (b) View corridors. In the CA3 Critical Area Urban Developed Overlay District and in the CA4 Critical Area Urban Diversified Overlay District, view corridors the width of the street right-of-way shall be protected, and extended when reasonably possible, to the river valley from streets essentially perpendicular to the river.
- (c) Height of structures. For development where the elevation of existing natural topography is altered by more than five (5) feet, the grade from which the height of structures is measured shall be the elevation of the ground surface prior to excavation or filling. The height of structures shall be limited as follows:
  - (1) thirty (30) feet maximum in the CA1 Critical Area Rural Open Space Overlay District and in the CA2 Critical Area Urban Open Space Overlay District;

(2) In the CA3 Critical Area Urban Developed Overlay District and in the CA4 Critical Area Urban Diversified Overlay District:

- a. thirty-six (36) feet maximum within two hundred (200) feet of the river ordinary high water level;
- b. forty-eight (48) feet maximum within five hundred (500) feet of the river ordinary high water level;
- c. thirty-six (36) feet maximum between the bluff toe and bluffline and within one hundred (100) feet landward of a bluffline;
- d. forty-eight (48) feet maximum within three hundred (300) feet riverward of the bluff toe;
- e. in the remainder of CA3 and CA4 Critical Area Overlay Districts not specified in (2)a-d above, forty-eight (48) feet maximum in the CA3 Critical Area Urban Developed Overlay District and sixty (60) feet maximum in the CA4 Critical Area Urban Diversified Overlay District.

(d) Exceptions to height limits for specific areas. The following exceptions to the height limits in paragraph (c) above shall be permitted:

- (1) the area of downtown Saint Paul along the river's left descending bank from Chestnut Street to the Lafayette/Highway 52 bridge, where the height of structures shall be limited as follows:
  - a. fifteen (15) feet maximum between Wabasha Street and one hundred twelve (112) feet east of Robert Street; within Kellogg Mall, height shall be measured from the established grade of the park;
  - b. ninety (90) feet above Saint Paul Datum between Wabasha Street and St. Peter Street (extended);
  - c. thirty-six (36) feet maximum within four hundred (400) feet northeast of Chestnut Street, with sixty (60) feet maximum allowed on the block bounded by Chestnut Street, Eagle Parkway and Exchange Street;

**~~Sec. 63.103. Height districts.~~**

~~In order to protect the economic and aesthetic amenities of the city and in order to implement plans long envisioned, those areas of the city shown on map entitled "Height Districts of The City of Saint Paul" are restricted to the following maximum height for all structures:~~

Area	Maximum Height of Structure (Saint Paul Datum in Feet)
<del>I</del>	<del>-60</del>
<del>II</del>	<del>-75</del>
<del>III</del>	<del>-90</del>

~~(Code 1956, 62.118; Ord. No. 17204, 1-15-85)~~

- (2) the area of the West Side Flats bounded by the river, Wabasha Street, Plato Boulevard, and Robert Street, where the height of structures shall be limited as follows:
  - a. thirty-six (36) feet maximum within two hundred (200) feet of the river ordinary high water level;



- b. forty-eight (48) feet maximum within three hundred (300) feet of the river ordinary high water level;
  - c. sixty (60) feet maximum in the remainder of the area, with seventy-two (72) feet maximum allowed within two hundred (200) feet of the centerline of Filmore Avenue;
- (3) the Upper Landing area along the river's left descending bank from the Smith Avenue High Bridge to Chestnut Street within five hundred (500) feet of the river ordinary high water level, where the height of the structures shall be limited to sixty (60) feet maximum.
- (e) *Exceptions to height limits for specific structures.* The following structures are exempt from the height limits in paragraphs (c) and (d) above:
  - (1) bridges, bridge approach roadways, stairways, structures needed for transportation safety, essential service distribution systems, transmission services, navigational and industrial uses requiring river access (but only to the extent a taller structure is needed for a river-dependent operational process), and restoration or reconstruction of historical structures that are locally designated or on the inventory of the State Historical Society or the National Register of Historic Places;
  - (2) publicly-owned, medium-scaled landmark civic structures may be permitted with a conditional use permit.

**Sec. 68.246. Dedication of land for parks, open space, and river access.**

- (a) *Generally.* Pursuant to Minn. Stat. Sec. 462.358, Subd. 2, as amended and as otherwise provided below, for platting of land, for lot splits for multiple-family residential development, for lot splits involving more than one-half acre of land, and for any development under the provisions of the PD Planned Development District, the owners, subdividers, or developers of the land shall convey to the city or dedicate to the public use a reasonable portion of the land for public use for parks, trails, open space, river access, or conservation purposes according to the requirements of this section and the purpose of this article stated in section 68.211(b). A phased development shall be considered one development for this provision. The Director of Parks and Recreation, Parks Commission, or City Council shall determine the location and configuration of any land dedicated, taking into consideration the suitability and adaptability of the land for its intended purpose, future needs of the proposed development, and following criteria:
  - (1) conformance with the city's adopted comprehensive plan and development or project plans for sub-areas of the city;
  - (2) areas identified for protection or restoration in an adopted city, regional, state, or national plan;
  - (3) areas that connect existing components of the open space network;
  - (4) areas that provide riverfront access or public views of the river and river valley;
  - (5) areas adjacent to the river or existing public parks, trails, or open space;
  - (6) areas representing significant landforms, native plant communities, sensitive habitat, or historical events;
  - (7) areas containing vegetation identified as endangered or threatened, or that provide

habitat for animals identified as endangered, threatened, or of special concern under 15 U.S.C. § 1531 et. seq. or Minn. Stat. § 84.0895, and rules adopted under these respective laws;

- (8) areas of riverbanks, floodplains, wetlands, natural ponds, creeks, streams, or bluffs;
  - (9) land dedicated solely for roadway, stormwater retention, or utility purposes, or otherwise unsuitable for the purposes listed above, shall not be accepted;
  - (10) dedicated land shall be accessible to the public served unless the Director of Parks and Recreation, Parks Commission, or City Council determines that the dedicated land is an environmentally or ecologically sensitive area for which public access would be detrimental.
- (b) *Parkland dedication formula.* For residential land, the property owners, subdividers or developers shall dedicate twelve (12) percent of the total land area, on a one time basis, for the purposes listed in subdivision (a) of this section. For commercial and industrial land greater than one (1) acre in size or adjacent to the river, the property owners, subdividers or developers shall dedicate twelve (12) percent of the total land area, on a one time basis, for the purposes listed in subdivision (a) of this section.
- (c) *Parkland dedication option; land and/or cash dedication.* At the discretion of the Director of Parks and Recreation, Parks Commission, or City Council, the owners, subdividers, or developers of property subject to this section shall contribute an amount in cash, in lieu of all or a portion of the land required under subdivisions (a) and (b) of this section or an equivalent value of improvements as approved by the Director of Parks and Recreation, Parks Commission, or City Council. The amount of cash shall be based upon the County Assessor's estimated market value of the total land area, at the time of city approval of the subdivision or PD Planned Development District, multiplies by the percentage of land that would otherwise be dedicated. Notwithstanding the dedication formula in subdivision (b) of this section, the maximum amount of cash dedication required under this section shall not exceed three thousand dollars (\$3000.00) per dwelling unit. The City Council may review this maximum cash dedication amount on a yearly basis and adjust it for inflation. In determining whether land dedication or cash in lieu thereof will be required, the Director of Parks and Recreation, Parks Commission, or City Council shall consider without limitation the suitability and adaptability of land within the site for the purposes listed in subdivision (a) of this section and criteria for land dedication in subdivision (a) of this section.
- (d) *Parkland dedication option; private land for public use.* The City Council may, at its discretion, waive all or a portion of the above land or cash dedication required under (b) or (c) of this section and enter into an agreement for the private development and/or maintenance of land for public use for parks, trails, open space, river access, or conservation purposes within the proposed subdivision or development, subject to the following conditions:
- (1) The land area or value of the land and improvements privately developed and maintained for parks, trails, open space, river access, or conservation purposes must at least equal that required under this ordinance.
  - (2) Land, facilities, and improvements accepted under this provision shall be accessible to the public in a manner similar to public land.
  - (3) The City Council must find, after recommendation of the Director of Parks and

Recreation and the Parks Commission, that such land and improvements will serve the purposes listed in subdivision (a) of this section; and

- (4) The City and the owners, subdividers, or developers of the land must have executed a parkland development agreement insuring that specified land shall be developed and maintained by the owners, subdividers, or developers, and any and all successors in interest thereof, of any type whatsoever, which includes, but is not limited to heirs and assigns, for the purposes listed in subdivision (a) of this section. The owners, subdividers, or developers must include a covenant running with the specified land indicating that the land to be developed and maintained for the purposes listed in subdivision (a) will revert to the City in the event of a failure to comply with this requirement. When a recordable covenant concerning the ownership, maintenance or use of private areas and facilities for parkland development is required, the covenant shall be submitted to the City for approval. Such covenant shall be recorded prior to or at the same time as the subdivision, and prior to final city approval of a PD Planned Development District.
- (e) *Parkland dedication; conveyance standards.* Prior to dedication and conveyance of the required property to the City, the owners, subdividers or developers shall provide the City with an acceptable abstract of title or registered property abstract for all land dedicated for park purposes, evidencing good and marketable title without liens or encumbrances of any kind except those encumbrances which the City Council has approved or required in connection with the proposed plat. The foregoing abstracts shall otherwise evidence good and marketable title free and clear of any mortgages, liens, encumbrances, assessments and taxes. For subdivision of property, for any required dedication of land that is not formally dedicated to the City with a final plat, the landowner shall record all deeds for conveyance of the property to the City prior to or at the same time as recording the final plat or other appropriate subdivision documents. Deeds for conveyance of property shall be recorded prior to final City Council approval of a PD Planned Development District.
- (f) *Parkland dedication; parkland development special fund.* All funds collected pursuant to the parkland dedication requirements of this section, and interest thereon, shall be deposited in a parkland development special fund and used solely for the acquisition and development or improvement of lands dedicated for public use for parks, trails, open space, river access or conservation purposes in the Critical Area in close proximity to the subdivision or development. Such funds may not be used for ongoing operations or maintenance. All fund expenditures shall be approved by the City Council upon recommendation of the director of parks and recreation in consultation with the parks and recreation commission. All fund contributions shall be paid as a condition of final City Council approval of any plat or PD Planned Development District and as a condition of final City approval of any lot split, except, when approved by the City Council, in the case of a development constructed in “phases,” funds otherwise required for each construction phase of the development shall be collected prior to obtaining the first building permit for that phase. Payments made to satisfy the requirements of this section shall be made separately from any payments for building permits or any other payment.